

AMENDED IN ASSEMBLY MARCH 12, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 590

Introduced by Assembly Member Feuer

February 25, 2009

An act to add Article 9.6 (commencing with Section 6159.5) to Chapter 4 of Division 3 of the Business and Professions Code, *and to amend Section 70626 of, and to add Chapter 2.1 (commencing with Section 68650) to Title 8 of, the Government Code*, relating to the practice of law.

LEGISLATIVE COUNSEL'S DIGEST

AB 590, as amended, Feuer. Legal aid.

Existing

(1) *Existing* law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is the duty of an attorney to, among other things, never reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed. Existing law provides that a lawyer may fulfill his or her ethical commitment to provide pro bono services, in part, by providing financial support to organizations providing free legal services to persons of limited means.

This bill would state the intent of the Legislature ~~to expand the availability of legal counsel in critical civil matters through locally controlled pilot programs designed to test and evaluate new methods for the fair and cost-efficient resolution of legal disputes, and the comprehensive enforcement of vital legal rights, with respect to basic human needs.~~ The bill would state the additional intent of the Legislature to encourage the legal profession to make further efforts to meet its

professional responsibilities and other obligations by providing pro bono legal services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

This bill would prohibit a person or organization that is not a specified type of legal aid organization, as defined, from using the term “legal aid,” or any confusingly similar name in any firm name, trade name, fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill additionally would prohibit any person from charging a fee for any legal form or other document created by a legal aid organization, a court, or other public agency that is available to the public without charge, or from charging a fee to assist in the provision of self-help services that are provided without charge by a court or legal aid organization. The bill would subject a person or organization that violates these prohibitions to specified civil liability.

This bill would, subject to funding specifically provided for this purpose, require the Judicial Council to develop one or more model pilot projects in selected courts pursuant to a competitive grant process and a request for proposals. The bill would provide that legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those courts selected by the Judicial Council, as specified. The bill would provide that each project shall be a partnership between the court, a qualified legal services provider that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project. The bill would require the lead legal services agency, to the extent practical, to identify and make use of pro bono services in order to maximize available services efficiently and economically.

(2) Existing law sets the fees at \$15 or \$20 for various court services, including, but not limited to, issuing a writ for the enforcement of an order or judgment, issuing an abstract of judgment, recording or registering any license or certificate, issuing an order of sale, and filing and entering an award under the Workers’ Compensation Law.

This bill would increase those fees by \$10, and would provide that the \$10 fee increase shall be transmitted quarterly for deposit in the Trial Court Trust Fund and used by the Judicial Council for implementing and administering the civil representation pilot program described in (1) above.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to expand the~~
2 ~~availability of legal counsel in critical civil matters through locally~~
3 ~~controlled pilot programs designed to test and evaluate new~~
4 ~~methods for the fair and cost-efficient resolution of legal disputes,~~
5 ~~and the comprehensive enforcement of vital legal rights, with~~
6 ~~respect to basic human needs. These pilot programs shall be~~
7 ~~implemented without additional allocations from or expenditures~~
8 ~~by the state General Fund. The pilot programs should be designed~~
9 ~~to guard against the involuntary waiver of those rights or their~~
10 ~~disposition by default, particularly by indigent parties, including~~
11 ~~the elderly and people with disabilities. These pilot programs~~
12 ~~should be designed to address the substantial inequities in timely~~
13 ~~and effective access to justice that often give rise to an undue risk~~
14 ~~of erroneous decision because of the nature and complexity of the~~
15 ~~law and the proceeding or disparities between the parties in~~
16 ~~education, sophistication, language proficiency, and legal~~
17 ~~representation or access to self-help or alternative dispute resolution~~
18 ~~services. The Legislature further recognizes that there are~~
19 ~~significant social and governmental costs of depriving such parties~~
20 ~~of those legal rights, and that these costs may be avoided by~~
21 ~~providing the assistance of counsel where parties have a reasonable~~
22 ~~possibility of achieving a favorable outcome.~~

23 ~~SECTION 1. The Legislature hereby finds and declares all of~~
24 ~~the following:~~

25 ~~(a) There is an increasingly dire need for legal services for poor~~
26 ~~Californians. Due to insufficient funding from all sources, existing~~
27 ~~programs providing free services in civil matters to indigent and~~
28 ~~disadvantaged persons, especially underserved groups such as~~
29 ~~elderly, disabled, children, and non-English-speaking persons,~~
30 ~~are not adequate to meet existing needs.~~

31 ~~(b) The critical need for legal representation in civil cases has~~
32 ~~been documented repeatedly and the statistics are staggering.~~
33 ~~California courts are facing an ever increasing number of parties~~
34 ~~who go to court without legal counsel. Over 4.3 million~~
35 ~~Californians are believed to be currently unrepresented in civil~~
36 ~~court proceedings, largely because they cannot afford~~
37 ~~representation. Current funding allows legal services programs~~
38 ~~to assist less than one-third of California's poor and lower-income~~

1 residents. As a result, many Californians are unable to
2 meaningfully access the courts and obtain justice in a timely and
3 effective manner. The effect is that critical legal decisions are
4 made without the court having the necessary information, or
5 without the parties having an adequate understanding of the orders
6 to which they are subject.

7 (c) The modern movement to offer legal services for the poor
8 was spearheaded by Sargent Shriver in 1966, aided by the
9 American Bar Association, then headed by future Supreme Court
10 Justice Lewis Powell, driven by the large disparity that existed
11 between the number of lawyers available for poor Americans
12 compared with the availability of legal services for others. While
13 much progress has been made since then, significant disparity
14 continues. According to federal poverty data, there was one legal
15 aid attorney in 2006 for every 8,373 poor people in California. By
16 contrast, the number of attorneys providing legal services to the
17 general population is approximately one for every 240 people –
18 nearly 35 times higher.

19 (d) There are significant social and governmental costs of
20 depriving unrepresented parties of vital legal rights affecting basic
21 human needs, particularly with respect to indigent parties,
22 including the elderly and people with disabilities, and these costs
23 may be avoided or reduced by providing the assistance of counsel
24 where parties have a reasonable possibility of achieving a
25 favorable outcome.

26 (e) Expanding representation will not only improve access to
27 the courts and the quality of justice obtained by these individuals,
28 but will allow court calendars that currently include many
29 self-represented litigants to be handled more effectively and
30 efficiently. Increasing the availability of legal representation for
31 litigants who must currently represent themselves or face loss of
32 their legal rights is a key priority of the Judicial Council and Chief
33 Justice Ronald M. George. As the Chief Justice has noted, the
34 large and growing number of self-represented litigants is one of
35 the most challenging issues in the coming decade, imposing
36 significant costs on the judicial system and the public by impairing
37 the ability of the courts to efficiently process heavy caseloads, and
38 eroding the public's confidence in our judicial system. The
39 experience and data collected through a pilot program will assist

1 *the courts and the legal community in developing new strategies*
2 *to provide legal representation to overcome this challenge.*

3 SEC. 2. In light of the large and ongoing justice gap between
4 the legal needs of low-income Californians and the legal resources
5 available to meet those needs, it is the intent of the Legislature to
6 encourage the legal profession to make further efforts meet its
7 professional responsibilities and other obligations by providing
8 pro bono legal services and financial support of nonprofit legal
9 organizations that provide free legal services to underserved
10 communities.

11 SEC. 3. Article 9.6 (commencing with Section 6159.5) is added
12 to Chapter 4 of Division 3 of the Business and Professions Code,
13 to read:

14
15 Article 9.6. Legal Aid Organizations

16
17 6159.5. The Legislature hereby finds and declares all of the
18 following:

19 (a) Legal aid programs provide a valuable service to the public
20 by providing free legal services to the poor.

21 (b) Private, for-profit organizations that have no lawyers have
22 been using the name “legal aid” in order to obtain business from
23 people who believe they are obtaining services from a nonprofit
24 legal aid organization.

25 (c) Public opinion research has shown that the term “legal aid”
26 is commonly understood by the public to mean free legal assistance
27 for the poor.

28 (d) Members of the public seeking free legal assistance are often
29 referred by telephone and other directory assistance information
30 providers to for-profit organizations that charge a fee for their
31 services, and there are a large number of listings in many telephone
32 directories for “legal aid” that are not nonprofit but are actually
33 for-profit organizations.

34 (e) The Los Angeles Superior Court has held that there is a
35 common law trademark on the name “legal aid,” which means
36 legal services for the poor provided by a nonprofit organization.

37 (f) The public will be benefited if for-profit organizations are
38 prohibited from using the term “legal aid,” in order to avoid
39 confusion.

1 6159.51. For purposes of this article, “legal aid organization”
2 means a nonprofit organization that provides civil legal services
3 for the poor without charge.

4 6159.52. (a) It is unlawful for any person or organization to
5 use the term “legal aid,” “legal aide,” or any confusingly similar
6 name in any firm name, trade name, fictitious business name, or
7 any other designation, or on any advertisement, letterhead, business
8 card, or sign, unless the person or organization is a legal aid
9 organization subject to fair use principles for nominative,
10 descriptive, or noncommercial use.

11 (b) It is unlawful for any person to sell or charge a fee for any
12 legal form or other document created by a legal aid organization
13 or by a court or other public agency of the state regarding or for
14 use in a court action or proceeding if the form or other document
15 is available to the public without charge from the legal aid
16 organization, court, or other public agency.

17 (c) It is unlawful for any person for a fee to assist or offer to
18 assist in the provision of self-help services that are provided
19 without charge by a court or legal aid organization.

20 6159.53. (a) Any consumer injured by a violation of Section
21 6159.52 may file a complaint and seek injunctive relief, restitution,
22 and damages in the superior court of any county in which the
23 defendant maintains an office, advertises, or is listed in a telephone
24 directory.

25 (b) A person who violates Section 6159.52 shall be subject to
26 an injunction against further violation of Section 6159.52 by any
27 legal aid organization that maintains an office in any county in
28 which the defendant maintains an office, advertises, or is listed in
29 a telephone directory. In an action under this subdivision, it is not
30 necessary to allege or prove actual damage to the plaintiff, and
31 irreparable harm and interim harm to the plaintiff shall be
32 presumed.

33 (c) Reasonable attorney’s fees shall be awarded to the prevailing
34 plaintiff in any action under this section.

35 *SEC. 4. Chapter 2.1 (commencing with Section 68650) is added*
36 *to Title 8 of the Government Code, to read:*

CHAPTER 2.1. CIVIL LEGAL REPRESENTATION

68650. (a) Legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those specified courts selected by the Judicial Council as provided in this section.

(b) (1) Subject to funding specifically provided for this purpose pursuant to subdivision (d) of Section 70626, the Judicial Council shall develop one or more model pilot projects in selected courts pursuant to a competitive grant process and a request for proposals. Projects authorized under this section shall provide representation of counsel for low-income persons who require legal services in civil matters involving basic human needs that would not be met using existing legal resources, and to gather information on the outcomes associated with providing these services, to guard against the involuntary waiver of those rights or their disposition by default. These pilot projects should be designed to address the substantial inequities in timely and effective access to justice that often give rise to an undue risk of erroneous decision because of the nature and complexity of the law and the proceeding or disparities between the parties in education, sophistication, language proficiency, legal representation, access to self-help, and alternative dispute resolution services. In order to ensure that the scarce funds available for the program are used to serve the most critical cases and the parties least able to access the courts without representation, eligibility for representation shall be limited to clients whose household income falls at or below 200 percent of the federal poverty level. Projects shall impose asset limitations consistent with their existing practices in order to ensure optimal use of funds.

(2) Each project shall be a partnership between the court, a qualified legal services provider that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project. The lead legal services agency shall be the central point of contact for receipt of referrals to the project and to make determinations of eligibility based on uniform criteria. The lead legal services agency shall be responsible for providing representation to the clients or referring the matter to one of the organization or individual providers with whom the legal services

1 agency contracts to provide the service. To the extent practical,
2 the lead legal services agency shall identify and make use of pro
3 bono services in order to maximize available services efficiently
4 and economically.

5 SEC. 5. Section 70626 of the Government Code is amended to
6 read:

7 70626. (a) The fee for each of the following services is ~~fifteen~~
8 ~~twenty-five~~ dollars ~~(\$15)~~. ~~Amounts~~ (\$25). *Subject to subdivision*
9 *(d), amounts* collected shall be distributed to the Trial Court Trust
10 Fund under Section 68085.1.

11 (1) Issuing a writ of attachment, a writ of mandate, a writ of
12 execution, a writ of sale, a writ of possession, a writ of prohibition,
13 or any other writ for the enforcement of any order or judgment.

14 (2) Issuing an abstract of judgment.

15 (3) Issuing a certificate of satisfaction of judgment under Section
16 724.100 of the Code of Civil Procedure.

17 (4) Certifying a copy of any paper, record, or proceeding on file
18 in the office of the clerk of any court.

19 (5) Taking an affidavit, except in criminal cases or adoption
20 proceedings.

21 (6) Acknowledgment of any deed or other instrument, including
22 the certificate.

23 (7) Recording or registering any license or certificate, or issuing
24 any certificate in connection with a license, required by law, for
25 which a charge is not otherwise prescribed.

26 (8) Issuing any certificate for which the fee is not otherwise
27 fixed.

28 (b) The fee for each of the following services is ~~twenty~~ *thirty*
29 ~~dollars (\$20)~~. ~~Amounts~~ (\$30). *Subject to subdivision (d), amounts*
30 *collected* shall be distributed to the Trial Court Trust Fund under
31 Section 68085.1.

32 (1) Issuing an order of sale.

33 (2) Receiving and filing an abstract of judgment rendered by a
34 judge of another court and subsequent services based on it, unless
35 the abstract of judgment is filed under Section 704.750 or 708.160
36 of the Code of Civil Procedure.

37 (3) Filing a confession of judgment under Section 1134 of the
38 Code of Civil Procedure.

39 (4) Filing an application for renewal of judgment under Section
40 683.150 of the Code of Civil Procedure.

1 (5) Issuing a commission to take a deposition in another state
2 or place under Section 2026.010 of the Code of Civil Procedure,
3 or issuing a subpoena under Section 2029.300 to take a deposition
4 in this state for purposes of a proceeding pending in another
5 jurisdiction.

6 (6) Filing and entering an award under the Workers'
7 Compensation Law (Division 4 (commencing with Section 3200)
8 of the Labor Code).

9 (7) Filing an affidavit of publication of notice of dissolution of
10 partnership.

11 (8) Filing an appeal of a determination whether a dog is
12 potentially dangerous or vicious under Section 31622 of the Food
13 and Agricultural Code.

14 (9) Filing an affidavit under Section 13200 of the Probate Code,
15 together with the issuance of one certified copy of the affidavit
16 under Section 13202 of the Probate Code.

17 (10) Filing and indexing all papers for which a charge is not
18 elsewhere provided, other than papers filed in actions or special
19 proceedings, official bonds, or certificates of appointment.

20 (c) The fee for filing a first petition under Section 2029.600 or
21 2029.620 of the Code of Civil Procedure, if the petitioner is not a
22 party to the out-of-state case, is eighty dollars (\$80). Amounts
23 collected shall be distributed to the Trial Court Trust Fund pursuant
24 to Section 68085.1.

25 (d) *Of the amounts collected pursuant to subdivisions (a) and*
26 *(b), ten dollars (\$10) of each fee shall be transmitted quarterly to*
27 *be deposited in the Trial Court Trust Fund and used by the Judicial*
28 *Council for the expenses of the Judicial Council in implementing*
29 *and administering the civil representation pilot program under*
30 *Section 68650.*